

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7080**

**BILL NUMBER:** HB 1320

**NOTE PREPARED:** Feb 24, 2010

**BILL AMENDED:** Feb 24, 2010

**SUBJECT:** Ephedrine and Medication Substitution.

**FIRST AUTHOR:** Rep. Harris

**FIRST SPONSOR:** Sen. Miller

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill requires the Attorney General (AG) to enter into a memorandum of understanding with an entity to provide a pseudoephedrine (PSE) tracking system that meets certain standards. The bill also allows the Indiana State Police (ISP) to enter into a contract with a vendor before July 1, 2010, to provide a PSE tracking system that meets certain standards.

The bill prohibits a retailer from selling, and a purchaser from purchasing, more than 3.6 grams of ephedrine or pseudoephedrine on one day, or nine grams of ephedrine or pseudoephedrine in a 30-day period. (Current law prohibits the sale of products containing more than 3 grams of ephedrine or PSE in one transaction.)

The bill requires a retailer to electronically transmit certain information concerning the sale of ephedrine and PSE to a statewide PSE tracking system. It provides that, effective January 1, 2011, a retailer must begin entering data into the PSE tracking system not later than 180 days after the ISP enters into a contract.

The bill requires a retailer that sells drugs containing ephedrine or pseudoephedrine to: (1) post a sign warning that it is a criminal offense for a person to purchase drugs containing more than certain quantities of ephedrine or pseudoephedrine; and (2) require the clerk who is conducting the transaction to personally advise a purchaser that it is a criminal offense for a person to purchase drugs containing more than certain quantities of ephedrine or pseudoephedrine. It also provides that, upon request, the clerk who conducts the transaction shall advise the purchaser how many grams of ephedrine or pseudoephedrine are contained in the drugs being purchased.

The bill provides that an exemption to the tracking requirement for persons who do not sell exclusively to walk-in customers will apply only to persons who do not sell to any walk-in customers.

The bill also requires the ISP to report before June 30, 2013, to the Legislative Council concerning the effectiveness of PSE electronic tracking in reducing the illicit production of methamphetamine.

The bill specifies that the Board of Pharmacy (Board) shall adopt certain rules concerning a pharmacy that does not comply with PSE tracking requirements.

The bill also requires the Board to report during the 2010 interim session to the Health Finance Commission concerning drug substitution and the implementation of the PSE statewide electronic tracking system. It also requires the Health Finance Commission to study the implementation and effectiveness of the PSE tracking system during the 2011 interim.

**Effective Date:** (Amended) Upon Passage; July 1, 2010; January 1, 2011.

**Explanation of State Expenditures:** (Revised) This bill would require a person to begin entering data into an electronic PSE tracking system that may be selected by the Indiana State Police. (The sales tracking requirements of the bill do not apply to the sale of convenience packs.) The cost of entering into a contract for the PSE would depend on administrative actions taken by the ISP, should they contract for a system. The Attorney General's Office is also required to enter into a memorandum of understanding to operate a PSE tracking system as well. The AG's Office reports that the resources necessary to implement the electronic PSE tracking system are currently not known.

The bill also requires the Board of Pharmacy to adopt rules and procedures regarding a pharmacy or pharmacist that violates the entry requirements for the electronic sales tracking system. The bill's rule promulgation requirements are within the Board of Pharmacy's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

The Indiana Professional Licensing Agency (IPLA) reports that the Board of Pharmacy operates a similar electronic prescription monitoring system for pharmacies, called INSPECT, that collects all controlled substance prescription records in the state. That system costs \$350,000 annually and requires 5 full-time staff members. The bill does not address what agency will be responsible for any costs of implementation, training of sales clerks, and ensuring compliance with the requirements of the bill. IPLA estimates these costs could exceed \$500,000 depending on the number of retailers that are required to track the sales of ephedrine and PSE. The bill does not specify who would be responsible for training, maintenance, or ensuring compliance with the system.

The bill requires the ISP to report to the Legislative Council before June 30, 2013, concerning the effectiveness of PSE tracking. The availability of the resources necessary to prepare the required report is not known at this time. ISP reports that they currently do not have the manpower to ensure that retailers comply with the existing paper log requirements for tracking the sales of ephedrine and PSE. However, enforcement responsibilities are not specifically assigned in the statute, which means that the provisions of the law may be enforced by any law enforcement officer.

The bill also requires the Health Finance Commission to study the implementation and effectiveness of the PSE tracking system during the 2011 interim.

**Background Information:** Current law requires retailers selling drugs with ephedrine or pseudoephedrine to

complete a paper or electronic log. (Retailers selling convenience packs containing less than 120 milligrams of ephedrine or PSE, are excluded from the sales tracking requirements.) Currently, three retailers are electronically submitting data to the Indiana State Police. Both electronic and paper records are maintained by the ISP for two years unless a suspicious pattern of consumption is detected in the electronic records, at which point a record may be maintained for five years. Indiana was given software by Tennessee for the electronic log. No funds have been allotted or expended on the electronic log to date.

Handgun license fees in excess of \$1.1 M are available to the ISP to operate and maintain the central repository for criminal history or to establish, operate, and maintain an electronic log of drug sales if the funds are allotted by the State Budget Agency. In FY 2009, the total handgun license fee revenues were \$6.4 M, and the portion available for the two allowed purposes was approximately \$5.3 M.

The Indiana Retail Council reports that about 93% of the products containing ephedrine or PSE are sold in stores that contain pharmacies. Excluding retail outlets that sell only convenience packs and not subject to the tracking requirements, they estimate that there are about 2,000 retail outlets that would be affected by the electronic sales tracking provisions - about 1,600 of which contain pharmacies. (Kentucky, in implementing an electronic tracking system in 2005, restricted the sales of products containing ephedrine, PSE, or phenylpropanolamine in tablet, caplet, or powder form to stores that have pharmacies.)

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** IPLA; ISP; AG.

**Local Agencies Affected:**

**Information Sources:** IPLA; ISP; AG; Indiana Retail Council.

**Fiscal Analyst:** Kathy Norris, 317-234-1360.